HIGH COURT OF UTTARANCHA AT NAINITAL

Criminal Revision No. 105 of 2002

Nathu alias Jamil
S/o Sri Dini
R/o Village Majra P.S. Kiotwali
District Dehradun .....Revisionist

Versus

State .....Respondent

Hon'ble J. C. S. Rawat, J

This criminal revision has been directed against the judgment and order dated 01.11.2002 passed by Sri Jile Singh the then Addl. Sessions Judge confirming the judgment and order dated 8.6.2000 passed by Sri N.K. Tyagi the then Judicial Magistrate, District Dehradun in case No.245/1998, whereby the revisionist was convicted and sentenced for a period of three months S.I. and a fine of Rs.500/- under section 447 IPC. In default of payment of fine, the revisionist to undergo further fifteen days S.I.

The present prosecution was filed before the learned Magistrate with the allegations that the revisionist had forcibly entered into the land of the complainant and constructed a house over there without permission of the complainant and in violation of the orders of the civil court. The notice was given to the revisionist by the complainant but no heed was paid to the complainant for vacating the premises which was illegally occupied by the revisionist. The complainant filed a complaint before the learned Magistrate and the learned Magistrate after taking the evidence convicted the revisionist as indicated above. Feeling aggrieved this, the revisionist preferred an appeal before the Sessions Judge and the Sessions Judge has also confirmed the finding of the learned Magistrate. Feeling

aggrieved by this, the revisionist has come up before this Court.

I have heard Sri Vinod Sharma learned counsel for the revisionist and Sri Rajeev Singh learned A.G.A. and perused the record carefully.

The learned counsel for the revisionist did not dispute the propriety of the finding of the learned Sessions Judge in regard to the guilt of the revisionist who had been convicted for the offence punishable under section 447 I.P.C. and submitted that the court of appeal had not considered the question of applicability of section 360 & 361 Cr.P.C. It was further submitted that since the revisionist has no criminal history hence he is entitled to the benefit of the First Offenders Act. The learned counsel for the revisionist has also submitted that the lower court has not recorded any finding as to why the benefit of First Offenders Act was not given to the revisionist.

The learned Counsel for the revisionist contended that the learned Magistrate has completely ignored the provisions of section 235(2) Cr.P.C. The learned A.G.A. refuted the contention. I have gone through the record. The revisionist was punished under section 447 IPC and it was a summons trial. Section 235(2) is applicable in the session trial and it is not applicable in the summons trial. In the sessions trial and in the warrant trials the hearing of the accused on the question of sentence is necessary but if the accused is tried for lesser offence as in the case of the summons trial there is no such provision and there is no necessity on giving the opportunity of hearing to the accused on the question of evidence in the summons trials. Therefore, the contention of the learned counsel for the revisionist is not tenable.

The learned counsel for the revisionist in support of his argument has relied upon the decision of the Hon'ble Supreme Court **in Chandreshwar Sharma Vs. State of Bihar S.C. 2000 (40) ACC p/644.**

Section 4 of the Probation of Offenders Act 1958 provides that when and person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is guilty is of opinion that, having record to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct.

Looking to the circumstances of the case and considering the previous antecedents, the benefit of section 4 of the Probation of Offenders Act 1958 may be given to the revisionist. I accordingly, while maintaining the conviction of the revisionist, direct that he will be dealt with under section 4 of the Probation of Offenders Act, 1958 and as such, I direct that the revisionist be released on probation of good conduct instead of sentencing him, and he should enter into a bond of good conduct with two sureties to appear and receive the sentence when called upon during the period of six months. The bond for the period of six months shall be executed before the Chief Judicial Magistrate, Dehradun, within three months from today.

The revision is disposed of accordingly.

(J.C.S.Rawat, J.)

Dated 17.11.2004

LSR